

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/22/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-007837

FILED: _____

PABLO PESCADOR, et al.

CHARLES J SLACK-MENDEZ

v.

ANTHONY DE LA GARZA

STANLEY SILAS

GLENDAL JUSTICE COURT
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement without oral argument and the Court has considered and reviewed the record of the proceedings from the Glendale Justice Court, exhibits made of record and the Memoranda submitted.

Legal Background

After a hearing on March 18, 2002, the trial judge entered a judgment in favor of plaintiffs for a Forcible/Special Detainer action. The judge granted restitution for five days after the trial date and told the defendants they had to vacate the apartment unless they filed an appeal. From said order, defendants bring this appeal.

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There are two main issues on appeal, and the first is, dispositive of this appeal: The trial judge erred by ordering an eviction for a pet violation, in which the Appellant was given a 10-Day Non-Compliance Notice and before the required statutory minimum ten-days was exhausted to remedy the breach. Second, Appellant argues that the trial court erred by granting judgment for the Appellee, because the Appellee failed to prove her case by a preponderance of the evidence. Therefore, Appellants argue the trial judge should have dismissed the case pursuant to the statutory requirements of A.R.S. § 33-1377(G).

Factual Background

The facts necessary for a determination of this case on appeal are as follows:

On March 14, 2002, Appellee Pescador (Mountainview Apartments) filed a complaint for Forcible/Special Detainer requesting immediate possession of the premises for the specific acts that are in violation of the rental agreement. The Notice was served on Appellant and all other occupants listed a number of very serious acts that were deemed to be violations of the rental agreement. The Notice stated the actions constituted a material and irreparable breach as defined within the Residential Landlord Tenant Act and, as a result, permitted Appellee to seek the immediate termination of the Defendants' tenancy as provided by law.

During the hearing, Appellee introduced evidence regarding a number of calls made to the police for complaints that were called in against the Appellants from other tenants on the property.¹ Also introduced was a copy of the rental agreement between the parties². The rental agreement was introduced to identify for the court the relevant sections of the rental agreement which the Appellants had allegedly violated. The

¹ See Exhibit 3; For. Det. Hrg. Tr. 6:1 (March 18, 2002).

² See Appellants Exhibit 4.

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Appellants denied that their family had done any of the acts described in the Notice or had violated the terms of the rental agreement in any material manner. The Appellants insisted that on March 10, 2002, a key date in question, that they were being harassed and physically attacked by the property manager. Appellants believed that the harassment was provoked by the property manager against Mrs. De la Garza because of an incident that occurred between their sons. Four days after the incident, Appellants were served with an eviction notice. Moreover, the property manager for Appellee did not appear in court to testify. Appellee also stated that the Appellants had violated the rental agreement because they had a dog and had threatened children on the property with the dog.³ Appellee stated that he had given Appellants a 10-Day Notice to remove the dog from the property.⁴ The 10-Day Notice was given on March 12, 2002.

After the hearing the trial judge granted judgment to Appellee on March 18, 2002 even after concluding that there was no evidence presented that Appellants had violated the specific acts alleged by the Appellee. The judgment also included a Writ date of March 24, 2002.

Discussion

On August 27, 2001, Plaintiffs/Appellees caused a 10-Day Non-Compliance Notice to be served upon Appellants pursuant to A.R.S. Section 33-1368(A).⁵ Said notice provided, in pertinent part, as follows:

This letter serves as official notice to advise you that you are in violation of your rental agreement. As stated, NO Pets are allowed on the property at any time...You must remove your pets immediately or we will be forced to take action...

³ Tr. 9-11, Witness.

⁴ Tr. 10, Ms. Pescador.

⁵ Appellant's Exhibit 5; Tr. p. 9-11.

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A.R.S. Section 33-1368(A) provides that the written notice to the tenant must specify "the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ten (10) days after receipt if the notice of the breach is not remedied in ten (10) days." It is axiomatic that the scope of the notice defines and delineates what must be remedied by the tenant within ten (10) days so as to avoid termination of the lease agreement.

The Appellant received the written 10-Day Notice of Noncompliance on March 12, 2002. Under A.R.S. § 33-1368(A) they had until March 22, 2002, to remedy the breach to avoid termination. Therefore, as of the trial date on March 18, the Appellant had four days remaining to remedy the breach under statutory law. Given Appellees uncontested allegations of the facts, it is clear that the trial court erred by granting a judgment and eviction based on the Non-Compliance letter for the pet violation.

The dog was the only lease violation for which the Appellant was held responsible. Additionally, the trial court stated that it clearly did not find by a preponderance of evidence that any other material and irreparable breach occurred.⁶ Since the court did not find by a preponderance of evidence any other material or irreparable breach, the judgment and eviction based on the pet violation was an error.

IT IS THEREFORE ORDERED reversing the lower court's forcible/special detainer judgment of March 18, 2002.

IT IS FURTHER ORDERED remanding this matter back to the Glendale Justice Court for all further and future proceedings, including entry of judgment for Appellant, with the exception of attorneys fees and costs on appeal.

⁶ Tr. 37-39, The Court.
Docket Code 512

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IT IS FURTHER ORDERED that the Clerk of this Court or the Clerk of the Glendale Justice Court, shall release all money held as monthly payments of rent and/or bond to Appellees.

IT IS FURTHER ORDERED that counsel for Appellants submit an application and affidavit for attorneys fees by (date), with copies to counsel for Appellees.